

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on February 1, 1999
at 3:00 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Mike Taylor (R)

Members Excused: Sen. Bill Wilson (D)

Members Absent: None.

Staff Present: Larry Mitchell, Legislative Branch
Jyl Scheel, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 252, 2/1/1999; SB 253,
2/1/1999; SB 254, 2/1/1999; SB
255, 2/1/1999
Executive Action: SB 174, 2/1/1999; SB 276,
2/1/1999

HEARING ON SB 252, SB 253, SB 254, SB 255

Sponsor: SENATOR LORENTS GROSFIELD, SD 13, BIG TIMBER

Proponents:

Jan Sensibaugh, Department of Environmental Quality
Jim Mockler, Executive Director, Montana Coal Council

Opponents:

Don Allen, Western Environmental Trade Association and Cenex
Refinery
Leland Griffin, Montana Refining Company
Gail Abercromby, Montana Petroleum Association

Opening Statement by Sponsor:

SENATOR LORENTS GROSFIELD, SD 13, BIG TIMBER, referred to the Fiscal Note for **SB 253**. These bills have to do with air quality fees and are before you because of CI-75 which states there can be no fee increases without a vote of the people. These bills involve a couple of fee increases and therefore have to be in bill form with a separate bill to put the language on the ballot. **SB 255** is the ballot language for **SB 252** and **SB 254** is the ballot language for **SB 253**.

There is a one-time application fee when someone wants to apply for an air quality permit. Once they have the permit there is an annual operation fee. These bills increase both the application fee and the operation fee. Traditionally these fees have all been set in rule. The agency was given authority in Section 75-2-220 to come up with rules and in those rules set the fees with flexibility to vary those fees with time. CI-75 says you cannot do that anymore. Both **SB 252** and **SB 253** repeal the agency's authority to set their own fees in Section 75-2-220 which is in compliance with CI-75.

Why raise the fees? The agency has not, in recent years, upgraded a lot of equipment, they have been operating with some reduced staff and then got caught by CI-75. The bottom line is if these bills do not pass, they are going to have to cut back the service they give with respect to looking at air quality permittees around the state. That is not good for the agency nor the people of this state nor industry because the monitoring will not be as good. He thinks the people in this state and the industry in this state have a fairly good comfort level with the air quality program and it is working pretty well. He feels it is important to pass these bills to give them enough money to maintain that good program. The proposed fees are based on an estimate of what is called total billable emissions. You deal with air quality emissions in tons. The total billable emissions are estimated at 110,345 tons per year.

These bills are before you because of CI-75. If they do not pass, it is going to cut back the air quality program. If they do not pass the vote of the people, it will cut back the air quality program. That is the issue. Although there may be some concern over the fee increases, whatever is done is set in statute as they must be under CI-75. If they are not passed, then the Department will stay with what they had on November 3, 1998 and that will remain in effect until the people pass an increase, assuming CI-75 stays in place.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 12.1; Comments : None.}

Proponents' Testimony:

Jan Sensibaugh, Department of Environmental Quality, spoke in support of **SB 252, SB 253, SB 254, and SB 255** as per her written testimony. **EXHIBIT(nas25a01)**.

Jim Mockler, Executive Director, Montana Coal Council, stated it was a toss up as to if he was a proponent or opponent since he is not quite sure he understands the process. They do question the raise to \$29.90. They are not sure they need quite double the amount of government that they are presently getting. They feel the Department is doing a good job, they are happy working with them and feel they have been responsive to their needs. They do not feel \$29.90 is necessary on **SB 253**. The amount to keep them whole at this point is \$20.38. He requested the bill be amended to \$20.38 and spoke in support of **SB 253**.

Opponents' Testimony:

Don Allen, Western Environmental Trade Association, stated he had been involved with the Clean Air Act Advisory Committee for several years. The Department has been great to work with and very cooperative and have gone out of their way to be sure everyone knows up front where they are heading. He did not want his remarks to be interpreted as criticism of the Department. In visiting with his members they have felt that some increase is justified but the problem is with the amount. They are not sure what the number should be. He is aware that the Department has not gone through their budget process yet with Appropriations. Those that feel there is justification for some increase feel the emphasis should be put on the permitting side not necessarily on the other types of people they plan to add. Title V requires in federal law that fees be used to fund that.

Title V, at first, was a pretty detailed and complex system. Since that time they have switched to a more simplified approach. In talking about a \$750,000 increase he felt it was important for the committee to ask how those dollars will be spent, ask how much will go to FTE's and how much for equipment they have indicated they need and whatever else.

Don Allen, Cenex Refinery, stated he was switching hats to relate some of the concerns of the Cenex Refinery regarding the fees. Many have spent a lot of money to reduce emissions and should not be penalized for that. A modest increase of some sort would be reasonable yet trying to come up with that number is very hard to pinpoint today. Even though he stands in opposition to the bill he realizes they need to pass something to be in statute but the opposition lies in the amount and just what that number should be.

Leland Griffin, Refinery Manager, Montana Refining Company - Great Falls, stated he was in opposition to a portion of **SB 253** in particular the fees. It seems the more they have reduced their pollution, the higher the fees go, which goes against the incentive originally put into this Act. They spend hundreds of thousands to millions of dollars to try to reduce pollution and then turn right around and pay fees at this years 100% increase which can be very substantial. We feel it is wrong that as you lower pollution all you get is higher fees and bigger bureaucracy.

Gail Abercromby, Executive Director, Montana Petroleum Association, said it was odd to be before this committee talking about fees because of CI-75. Normally they are in the Appropriations Committee reaching that decision. Is \$29.90 an accurate figure and do we have the opportunity to debate whether 1, 2, 3, 4 or fewer FTE's are needed. This committee does not seem to be the forum in which to do that.

{Tape : 1; Side : A; Approx. Time Counter : 12.1 - 36.2; Comments : None.}

Questions from Committee Members and Responses:

SENATOR COLE questioned if they would want to raise the figures high enough so, if they pass, they do not have to go back to the people next year or the year after? Is that the feeling of the Department? **Ms. Sensibaugh** responded they figured the fees by taking the amount of the money that was currently appropriated to the base program. Through the budgeting process they figured out the additional money they felt they needed to bring the program up to where it would be adequate which included new FTE's, some

database conversion things, and some increased travel. Based on the budget we prepared for the appropriations committee and that average of 110,000 tons per year, they figured it would be \$29.90 to cover that cost.

SENATOR COLE stated the committee was hearing between \$20 and \$29. If \$20 were used do you think you would have to go back in a year or two to go to a higher figure or would you have surpluses left as you had in the past? **Ms. Sensibaugh** responded there would not be surpluses left as in the past and if they had the fees set at \$20.38 per ton that would be the base program that they operate now. It would limit them in some of the travel costs they have and some of the database conversion costs. There would be no new FTE's but it would be the base program they currently have.

SENATOR COLE said he noted there was a contingent voidance on these individual bills which is not in **SB 255** and he wondered why? **SEN. GROSFIELD** responded most of the fee bills had the contingent voidance language in them and he just went with it. He is not opposed to removing it because, after hearing the testimony of the proponents, they have said they would like to have these in statute to make life more predictable for them. He could understand the frustration if you miss a meeting and somebody raises the fee. It is similar to if you don't show up for Natural Resource Committee, the Chairman might put you on a subcommittee you had not counted on.

SENATOR COLE said so contingency voidance could be off and you could continue with this. **SEN. GROSFIELD** responded, yes as far as he was concerned.

{Tape : 1; Side : A; Approx. Time Counter : 36.2 - 44; Comments : Tape turned to Side B.}

SENATOR MAHLUM said it was stated that they had a delay of major purchases during the first years and that is what caused the large carryover. Did you spend this money on your major purchases so your program is kind of depleted right now? **Ms. Sensibaugh** stated yes, that was correct. They have bought all the computers they need to buy, the printers, the extra computer stuff and they have filled all the vacant positions so they are fully staffed.

SENATOR MAHLUM said it seems if you borrow your major purchases you do not have that big expenditure for equipment to monitor so it appears the only thing needed now is a little extra personnel? **Ms. Sensibaugh** responded they are still woefully behind in their database conversions. They have some real old databases that

need to be converted to some new databases like Oracle so the amount of money they had budgeted for data management would still be there even though they have purchased the equipment. They had planned on phasing that in.

SENATOR MAHLUM stated since they have their new computer base, they would have to fill in and see what they have not been able to fill in for the last couple or three years? **Ms. Sensibaugh** responded that was correct plus some software development. They have purchased the hardware. **SEN. MAHLUM** said consequently you want to go from \$15 to \$29. He thought it would be fiscally prudent if they could get by with \$20. **Ms. Sensibaugh** said if they keep the base program they have, yes, they could get by with \$20.

SENATOR COCCHIARELLA said in **EQC** do you think any of these entities have ever applied for permits? **SEN. GROSFIELD**, responded yes. **SEN. COCCHIARELLA** asked **SEN. GROSFIELD** if he thought **DEQ** has responded to those permit applications in a timely way generally? Have there been complaints? **SEN. GROSFIELD** responded no he did not think so, he thought they had received their permits. The people here as proponents or opponents for the bill are not people coming in asking for permit applications, they have their permits and have had them for years and years. The people coming in asking for new permits are not in the room.

SENATOR COCCHIARELLA asked if he was aware of slow processing of permit applications? **Mr. Griffin** responded yes, they had submitted numerous permits and feel they proceeded at a very slow rate. **SEN. COCCHIARELLA** asked what he felt the response time would be if these bills did not pass? **Mr. Griffin** said he did not feel he could honestly answer that question. **SEN. COCCHIARELLA** suggested that **Gail Abercromby**, **Don Allen** and **Leland Griffin** talk about what these permit fees should be together as a group if these are not the right numbers and have **CHAIRMAN CRISMORE** consider sending these bills to appropriations for review after this committee is done with them. She was concerned that if they did not have something here then they will get nothing when it is time for permit applications to be considered.

CHAIRMAN CRISMORE said he would like to have a better idea if they would be dealing with this at a later date also in appropriations? **Mr. Simonich**, **DEQ**, stated yes you will be. When people say "these bills" will be going to appropriations, these bills would not necessarily go to appropriations, these bills are before you because of CI-75. The Department has no

authority to set fees or raise fees, and as **Ms. Sensibaugh** indicated, they have statutory provisions that say the fees must be set annually. They are set now by the legislature or nothing is done with fees for the next two years. That is the legal process.

Next week when the Department begins in Joint Natural Resources Appropriations Subcommittee, they will be considering all the appropriations for the permitting program within **Ms. Sensibaugh's** division including those that would be funded by these fees. The proposed fees would be increases including not only the base operations within those programs but also increases for new FTE's and additional equipment in order to get on top of the air quality permitting situation. Currently the Department is behind in Title V operating permits. They are subject to losing that federal program if they do not get up to speed on it and they simply can not do it with the current staff. That will be heard next week during the budget session in the appropriations subcommittee.

CHAIRMAN CRISMORE asked if the bill were to pass out of committee as proposed here, then next week those fees could actually be lowered. **Mr. Simonich** stated next week the subcommittee can do whatever it chooses. It can choose not to give the Department the full appropriation, irregardless. The two do not necessarily tie together. What we are told is that the appropriation committee has chosen not to take action in the appropriations on **HB 2** anywhere there is other legislation pending. We are anticipating that the appropriations subcommittee is not going to deal with those fees at all until these bills are completely through in both the Senate and House. **CHAIRMAN CRISMORE** stated that was the procedure they had been using.

SENATOR COLE said on February 16 there are supposed to be hearings in the Supreme Court that pertain to CI-75. Depending on what happens there, some of these could wind up basically null and void with the contingencies, is that correct? **Mr. Simonich** responded he would imagine that would be the case, yes. **SEN. COLE** said the next question then is that we need to wrestle with whom we want working on these on February 16 and I wondered what your thoughts were on this? **Mr. Simonich** stated that, being the nervous Director and knowing how busy the legislators get as the session moves forward, he recognizes that although the hearing before the court is February 16, transmittal date is February 24. That does not allow the court too much time to make a decision before the committee may have to act on the bill and move it to the House if it is going to stay alive. It would certainly be the Department's preference to keep the bills alive and moving if it is your preference to move them at all.

SENATOR McCARTHY questioned when you are talking about going back to appropriations on these fees or going to appropriations to have them readjusted, what is the advantage of having this committee act on two that might be \$750,000 over what appropriations might choose to do? **Mr. Simonich** said he was not sure he could fully answer that. What they have proposed both to this committee and the appropriations committee is what they think is necessary and adequate to fund the operation in the next biennium. Action by either committee may not necessarily coincide with the other committee and he anticipates that at some point in time those differences may be resolved later on in some conference committee. **SEN. McCARTHY** said you already have your computers purchased, you already have your software purchased, what are we looking at for \$750,000? **Mr. Simonich** read from a list which included a variety of things, i.e. 3 new staff in permitting, .5 FTE in compliance, 2 additional technical support FTE's, air database conversion, increase in travel and space rental, an indirect charge for funding central services within the Department. There are a variety of things included on the list with accompanying costs and they would be happy to make that available to the committee prior to Executive Action. **SEN. McCARTHY** stated to **CHAIRMAN CRISMORE** that she agreed with **SEN. COCCHIARELLA** that these belong in appropriations.

SENATOR COCCHIARELLA said if these bills are only here because of CI-75, the committee does not need to deal with them, because CI-75 does not force them to put these in law. They can do this rule to change the fee anyway without our doing anything, all they have to do is get appropriations to spend the money, is that right? **SEN. GROSFIELD** answered no, if he understood the question right. CI-75 says the only way any fee can be increased is by a vote of the people. Article VIII, Section 17 of the Montana Constitution (CI-75) says you can not increase any fee without going to a vote of the people. What these bills are doing is corresponding to CI-75 with respect to the two fees that they want increased. It is putting the other in statutes but it is not changing them. **SEN. COCCHIARELLA** stated so basically we do not need these bills if that article of the constitution is overturned. **SEN. GROSFIELD** stated that was correct.

{Tape : 1; Side : B; Approx. Time Counter : 0 - 14; Comments : None.}

Closing by Sponsor:

SENATOR GROSFIELD stated he feels it would make sense to get a little more detail on what the increases are and what they would be used for. He is not sure \$29.90 is the right number but feels \$20.38 is too low, so somewhere in between. If it is slow now in getting the permits or response from the agency, it will be a lot slower unless the fee is adjusted. Interestingly, regarding the question from **SEN. COLE** that it would not hurt his feelings to take the contingent voidance language out. **Mr. North**, counsel for the agency, related something that changed his mind on the issue and that is that Title V of the Clean Air Act says that states must charge permit fees in order to adequately fund the air quality program. Someone asked if some of this could come out of General Fund. The answer to that would be no.

Congress fashioned Title V to say in order to avoid unfunded mandates of state taxpayers they were going to require that for air quality permitting, the permittees have to pay all of the fee which is essentially a user fee. Title V says the state, in order to adequately do this program and in order to keep their primacy from becoming at risk, has to update those fees annually according to the consumer price index. With CI-75 Montana can not do that. With that in mind, it would not be a good idea to take contingent voidance language out of this bill because of conflicting with federal law. He would guess that none of the permit holders want to lose primacy. No one has suggested that the program should be turned over to the feds. The fee then would be \$33.54 and there would be no cap, it would be however much it took. No one is suggesting that and he did not feel we wanted to consider that.

We are in a catch 22 between these bills and the appropriation process, but he felt these bills should be moved forward to get them through. He did not think it was correct to assume these bills were going to go out of this committee and to appropriations. I think they will go on to the House and see where they end up.

Where should the fee be between \$20.38 and \$29.90? The answer is found in another question and that is what level of a program do we want? What level of a program does the regulated industry want?

{Tape : 1; Side : B; Approx. Time Counter : 14 - 18; Comments : None.}

EXECUTIVE ACTION ON SB 174

Motion/Vote: SEN. ROUSH moved that SB 174 BE TABLED. Motion passed 9-2 with SEN. WILSON voting NO by proxy vote and SEN. COCCHIARELLA voting NO. SEN. KEATING was excused from the meeting at the time of the vote to present a bill in another hearing. The vote was left open for SEN. KEATING to vote. He voted Yes making the vote 9-2.

EXECUTIVE ACTION ON SB 276

Motion: SEN. COLE MOVED DO PASS ON AMENDMENTS SB027601.alm.
EXHIBIT (nas25a02)

Discussion:

Larry Mitchell reviewed the amendments. They are nothing more or less than presented at the hearing. Amendments 1-5 were offered at that time and Amendment 6 came in during the hearing and has been added to this list. Basically what they do is strike out any reference to GPS systems in the body of the bill and broaden that terminology to other alternative serving methods. The new amendment is #6 on page 2, line 3, specifying that the accuracy of the survey must meet the same standards as set forth in the previous section, basically accurate within 5 meters or as accurate as the Department determines is needed but still using alternative surveying methods.

Vote: SEN. COLE MOVED TO ACCEPT AMENDMENTS SB027601.alm.
CARRIED 11-0.

Motion/Vote: SEN. COLE moved that SB 276 DO PASS AS AMENDED. Motion carried 11-0. SEN. KEATING was excused from the meeting at the time of the vote to present a bill in another hearing. The vote was left open for SEN. KEATING to vote. He voted Yes making the vote 11-0.

{Tape : 1; Side : B; Approx. Time Counter : 18 - 19.7; Comments : None.}

ADJOURNMENT

Adjournment: 4:25 P.M.

SEN. WILLIAM CRISMORE, Chairman

JYL SCHEEL, Secretary

WC/JS

EXHIBIT (nas25aad)